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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/874,180	06/05/2001	Alastair Veitch	58537.000007	5606

7590 10/04/2004

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Richmond, VA 23219-4074

EXAMINER

FREJD, RUSSELL WARREN

ART UNIT	PAPER NUMBER
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2128

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/874,180		VEITCH ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Russell Frejd		2128	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 July 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-6 is/are rejected.
- 7) ☒ Claim(s) 2,3 and 7-10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7.3.01</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

In re Application of: Veitch et al.

***Examination of Application #09/874,180***

1. Claims 1-10 of application 09/874,180, filed on 5-June-2001, are presented for examination.

***Claim Rejections under 35 U.S.C. § 112, 2nd Paragraph***

2. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, due to the apparent grammatical error duplicating the phrase *from the rail test data recorder* on lines 17 and 18.

***Claim Objections under 37 CFR 1.75(d)(1)***

3. Claim 1 is objected to under 37 CFR 1.75(d)(1), wherein the term *track*) is included on line 9, and is being interpreted as *track*.

***Claim Rejections under 35 U.S.C. § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 and 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Pagano et al., hereinafter Pagano, U.S. Patent no. 5,777,891.

In re Application of: Veitch et al.

5.1 Pagano disclosed the invention as claimed, including a real-time non-destructive testing of rails [col. 1, line 62] comprising: (claim 1) a graphics and visualization sub-system for providing a graphic view of flaws as they are recognized, including three dimensions of information [col. 4, lines 28-30](applicant's visual image recording portion);

data collection which is processed by the distributed computing system to recognize the specific ultrasonic data profiles peculiar to each flaw type of interest, including the detection of potential flaw "events", creation of a volume profile of the response locations, and comparative evaluation of the resulting multi-channel 3-dimensional data with built-in flaw models [col. 3, lines 28-35](applicant's data recording portion for recording a condition of a track);

system verification provided to the operator, in real-time, of a graphic representation of the data on which the flaw detection decisions were made [col. 4, lines 47-8](applicant's rail inspection simulator), including: a graphics and visualization sub-system [col. 4, lines 28-30](applicant's visual image recording portion), data collection which is processed by the distributed computing system to recognize the specific ultrasonic data profiles peculiar to each flaw type of interest, including the detection of potential flaw "events" [col. 3, lines 28-35](applicant's data recording portion), "control functions" provided through "Test Parameter Update" screens on the control computer [col. 3, lines 42-4](applicant's controller for inputting the obtained rail test data), and an operator interface [col. 3, line 7; and lines 23-40](applicant's operator interface portion);

(claim 4) collecting data as the test vehicle moves along the rail [col. 3, lines 25-28](applicant's data recording portion during an actual rail inspection during travel over a rail);

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(claim 5) system verification provided to the operator, in real-time, of a graphic representation of the data on which the flaw detection decisions were made, for allowing rapid checks of basic functionality when test signals are applied at the system input [col. 4, lines 47-51](applicant's recording track data from the rail inspection simulator); and

(claim 6) collecting ultrasonic data [col. 3, line 28](applicant's recording of ultrasonic rail test data).

### ***Claim Objections***

6. The remaining claims 2, 3, and 7-10 are objected to for incorporating the rejection of its/their respective base claims by dependency.

### ***Response Guidelines***

7. A shortened statutory period for response to this action is set to expire **3 (three) months and 0 (zero) days** from the date of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).

8. **Any response to the Examiner in regard to this non-final action should be**

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**directed to:** Russell Frejd, telephone number (703) 305-4839, Monday-Friday from 0530 to 1400 ET, **or** the examiner's supervisor, Jean Homere, telephone number (703) 308-6647. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist, telephone number (703) 305-3900.

**mailed to:** Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**or faxed to:** (703) 872-9306

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*Hand-delivered responses should be brought to 220 South 20<sup>th</sup> Street, Crystal Plaza Two, Lobby, Room 1B03, Arlington, VA., 22202.*

Date: 27-September-2004

RUSSELL FREJD

RUSSELL FREJD  
PRIMARY EXAMINER